IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 796 OF 2018

1. Ashok Eknathrao Vikhe Patil
Age : adult, occ : business
R/o Loni, Taluka Rahata,
District Ahmednagar.

2. Balasaheb Kerunath Vikhe Patil
Age : adult, occ : business/agri.,
R/o Loni, Taluka Rahata,
Dist Ahmednagar Petitioners

Versus

1. Joint Charity Commissioner
Pune.

2. Radhakrishna Vikhe Patil
Age : adult, business
R/o Loni, Taluka Rahata,
District Ahmednagar

3. Bhagwantrao @ Abasaheb Kharde
Patil
Age : adult, occ : business
R/o Loni, Taluka Rahata,
District Ahmednagar

4. Annasaheb Mhaske Patil
Age : adult, occ : business
R/o Loni, Taluka Rahata,
District Ahmednagar

5. Pravara Sahakari Bank
Loni, Taluka Rahata,
District Ahmednagar

6. State of Maharashtra. Respondents

WITH
CIVIL APPLICATION NO. 4372 OF 2018

Ashok Eknathrao Vikhe Patil & anr Applicant
Versus
Joint Charity Commissioner & others Respondents

***
Mr. R.N. Dhorde, Senior Counsel, i/b
Mr. R.L. Adhe, Advocate for the petitioners/applicants.
Mr. S.K. Tambe, A.G.P. for the State.
Mr. V.D. Hon, Senior Counsel i/b
Mr. A.V. Hon, Advocate for respondent Nos. 2 and 4.
Mr. Ajinky Deshmukh, Advocate for respondent No. 5.
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CORAM : **N.J. JAMADAR, J.**

Judgment reserved on : 23rd March 2021.
Judgment pronounced on : 4th May 2021.

JUDGMENT :

Rule. Rule made returnable forthwith and with the consent of the Counsels for the parties, heard finally at the stage of admission.

2. The challenge to this petition is to an order dated 20th November 2017 passed by the learned Joint Charity Commissioner, Pune on applications (Exhibits 26 and 29) preferred by respondent Nos.2 and 3 herein, whereby those applications were allowed holding that petitioner No. 2 herein is not a person having interest in the Trust Pravara Rural Education Society, and, consequently, the application preferred by the petitioners under Section 41E of the Maharashtra Public Trusts Act, 1950 (the Act 1950) was not maintainable.

3. The petition arises in the backdrop of the following facts :

a) Pravara Rural Education Society (the trust) is a Society registered under the Societies Registration Act, 1860, and a public charitable Trust registered under the Act 1950, bearing registration No. P.T.R. No. F/52/Ahmednagar. The main object of the Trust is to impart education for human development. The Trust runs numerous educational institutes at different levels. The Trust was formed and mentored by Late Padmvibhushan Dr. Eknathrao Vikhe Patil.

b) Applicant No. 1 Ashok claims to be a trustee and Executive Chairman of the Trust. Applicant No. 2 Balasaheb claims to be a beneficiary thereof. The applicants assert that after the demise of Dr. Eknathrao Vikhe Patil, on 30th December 2017, respondent Nos.1 to 3 have unlawfully usurped the office of Chairman and Trustees of the said Trust. The respondents are guilty of various acts of omission and commission which endanger the Trust, its property and beneficiaries. Respondent No. 1 has availed loan to the tune of Rupees Four Crores against fixed deposit receipt of the Trust from respondent No. 4 bank for payment of salaries to the employees, when the said action was not warranted. Thus, alleging that the properties of the Trust are in danger of being wasted, damaged or improperly alienated by respondent Nos.1 to 3, the applicants preferred an application, being Application No. 13/2017, under Section 41E of the Act 1950 for various injunctive reliefs.

c) The respondents appeared in response to the notice. Respondent No. 1 preferred an application (Exhibit 26) questioning the tenability of the application under Section 41E of the Act 1950 on the ground that an application under Section 41E can be filed by two persons having interest in the Trust. But applicant No. 2 Balasaheb is not the person having interest in the Trust. Applicant No. 2 is not a member of Pravara Rural Education Society. Thus, applicant no. 2 doesn’t fall within sub-clause (d) of Section 2 (10) of the Act 1950 which defines, “person having interest”. Nor the applicant No. 2 is a beneficiary of the Trust.

d) Respondent No.2 also assailed the tenability of the application by filing an application (Exhibit 29). In addition to the ground that applicant No. 2 is not a person interested in the affairs of the Trust, respondent No. 2 pressed into service two more grounds, namely, the applicant No.1 who claims to be the Executive Chairman of the Society cannot not institute an application for injunction and in the absence of the Trust having been impleaded as a party, the application was not tenable.

e) The applicants resisted the maintainability applications by filing replies. It was asserted that applicant No. 2 is the beneficiary of the Trust within the meaning of sub-clause (e) of Section 2 (10) of the Act 1950. The beneficial interest was claimed on two counts. One, applicant No. 2 is the member of Sugar Factory namely Padmashri Dr. Vitthalrao Vikhe Patil Cooperative Sugar Factory Limited, which had financially supported the Trust in its nascent state. Two, the children of applicant No.2 were the students of the institutes run by the Trust. The applicants asserted that in case of a Public Trust, the term “beneficiary” is required to be construed liberally and, thus construed, means public at large. The rest of the grounds raised by respondent Nos.2 and 3 were stated to be untenable.

f) The learned Joint Charity Commissioner, after appraisal of the rival contentions and submissions canvassed across the bar, was persuaded to hold that applicant No.1 was very much a person having interest in the Trust. However, the applicant No. 2 failed to satisfactorily establish that he is the beneficiary of the Trust. The applications were, thus, allowed holding that applicant No.2 was not the person having interest in the Trust. Resultantly, the application under Section 41E of the Act 1950 came to be dismissed.

g) Being aggrieved, the applicants have preferred this petition.

4. I have heard Mr. R.N. Dhorde, the learned Senior Counsel for the petitioners, Mr. Tambe, the learned A.G.P., Mr. V.D. Hon, the learned Senior Counsel for respondent Nos.2 and 4 and Mr. Ajinkya Deshmukh, the learned Counsel for respondent No.5.

5. Mr. Dhorde, the learned Senior Counsel for the applicants, submitted that the learned Joint Charity Commissioner has taken a very hyper technical view of the matter. In the light of the objects of the Trust, which was primarily conceived as a Rural Development Society, the term "beneficiary" ought to have received a liberal construction. The learned Joint Charity Commissioner misdirected himself in construing the term "beneficiary" in a constricted sense. In any event, according to Mr. Dhorde, the Joint Charity Commissioner in exercise of *parens patniae* jurisdiction ought to have considered the substance of the matter, as serious allegations of misfeasance and malfeasance were made against the respondents.

6. Per contra, Mr. Hon, the learned Senior Counsel for respondent Nos.2 and 4 would urge that the impugned order is well-reasoned and merited. Applicant No. 2 has no interest in the Trust much less a real and substantial interest. Applicant No.2 is an intermeddler. The action of the applicant No. 2 was actuated by a design of putting hindrances in the smooth administration of the Trust. In the circumstances, the learned Joint Charity Commissioner did not commit any error in nipping such an exercise in the bud, submitted Mr. Hon.

7. The learned A.G.P. and Mr. Ajinky Deshmukh, the learned Counsel for respondent No.5 also supported the

impugned order.

8. Evidently, the controversy lies in a narrow compass. Whether applicant No. 2 Balasaheb can be said to be the person having interest in the Trust is the only question which falls for consideration.

9. A brief resume of statutory provisions may be apposite. Section 41E of the Act 1950 empowers the Charity Commissioner to grant a temporary injunction or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of any property of the Trust where it is brought to his notice that any Trust property is in danger of being wasted, damaged or improperly alienated by any Trustee or any other person or that the Trustee or such person threatens or intends to remove or dispose of that property. Two modes in which the Charity Commissioner can take cognizance of such act are indicated in sub-section (1) of Section 41E. First, on the basis of a report submitted by the Deputy or Assistant Charity Commissioner. Second, on an application by <u>at least two persons having interest</u>, in the Trust.

10. Section 2 (10) of the Act 1950 defines the expression, "person having interest" as under :

"(10) " person having interest " [includes]—

> *(a) in the case of a temple, person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple, or who is entitled to partake or is in that habit of partaking in the distribution of gifts thereof,*
>
> *(b) in the case of a math, a disciple of the math or a person of the religious persuasion to which the math belongs*
>
> *(c) in the case of a Waqf, a person who is entitled to receive any pecuniary or other benefit from the Waqf and includes a person who has right to worship or to perform any religious rite in a mosque, idgah, imambara, dargah, maqbara or other religious institution connected with the Waqf or to participate in any religious or charitable institution under the Waqf,*
>
> *(d) in the case of a society registered under the Societies Registration Act, 1860, any member of such society, and*
>
> *(e) in the case of any other public trust, any trustee or beneficiary".*

11. The definition of "person having interest" is inclusive. Clause (d) of Clause (10) provides that, in case of a Society registered under Societies Registration Act, 1860, any member of such Society would be a person having interest. Thus, if a Trust is initially registered as a Society under Societies Registration Act, 1860 and it is shown that a person is a member of such Society, he becomes a person having interest in the society. Under Clause (e), which is residuary in nature and admits expansive interpretation, in case of any other public trust any trustee or beneficiary can be termed as the person having interest in the Trust.

12. It would be contextually relevant to note that by Maharashtra Public Trusts Act (Second Amendment) Act, 2017, clause 2A, which defines "beneficiary" came to be inserted in Section 2 of the Act 1950. It reads as under :

> *"(2A) "beneficiary" means any person entitled to any of the benefit as per the objects of the trust explained in the trust deed or the scheme made as per this Act and constitution of the trust and no other person".*

13. From the phraseology of newly inserted clause 2A, it becomes evident that the legislature has endeavoured to give a definite meaning to the term, "beneficiary". Its scope is sought to be restricted to a person entitled to any of the benefits as per the objects of the Trust and <u>no other person</u>.

14. A conjoint reading of clause (1o) (e) and clause 2A of Section 2 of the Act 1950, would indicate that a person who claims interest in the affairs of the Trust is required to demonstrate some substantial, real and direct beneficial interest in the Trust. A person who has no interest whatsoever in the Trust cannot be clothed with the status of a person having interest in the Trust on the general premise that the object of the Trust is advancement of public charities, unless he falls within the definition of "beneficiary".

15. A useful reference , in this context, can be made to a judgment of a learned Single Judge of this Court in the case of ***Peoples Education Society and others vs Mansing S. Moray and***

others, 2015 (6) Bom.C.R. 786, wherein this Court was confronted with the question of joining of a party to the proceeding under Section 73-A of the Act 1950 which empowers the Enquiry Officer to join any person having interest in the public trust as a party to the proceedings. In that context, after adverting to the provisions contained in Section 2 (10) of the Act 1950, it was enunciated that, "The expression "person having interest in the public trust" represents the persons having bona fide and genuine interest in public trust as against an interest with an ulterior motive or mala fide intention………. No doubt, the definition is inclusive, but it cannot be said that the person acting against the interest of such public trust or has no interest in the public trust or having hostile interest or has no connection with such public trust, can be permitted to participate in the proceedings without establishing the bona fides and testing his case on the touchstone of the provision of section 73-A read with section 2 (1) of the said Act.

16. The learned Joint Charity Commissioner, placing reliance on the aforesaid observations, was persuaded to enter the finding that the applicant No. 2 doesn't satisfy the test of, "person having interest".

17. The approach of the learned Joint Charity Commissioner seems justifiable. Indisputably, applicant No. 2 is not a member of Pravara Rural Education Society nor he claims

to be the trustee or office bearer of the Trust. Applicant No. 2 claims to be a beneficiary thereof. As indicated above, the claim of being the beneficiary hangs to the thin thread of applicant No. 2 being a member of the Sugar Factory, which had allegedly rendered financial assistance to the Trust and that the children of applicant No.2 were the students of the educational institutes run by the Trust.

18. The learned Joint Charity Commissioner recorded a finding of fact that there was no material to indicate that the said Sugar Factory had rendered such financial assistance. Indubitably, applicant No.2's children were not pursuing education in educational institutes run by the Trust when the application was filed. The learned Charity Commissioner was, thus, justified in recording a finding of fact that the interest claimed by the applicant No. 2 was too remote.

19. In exercise of writ jurisdiction, this Court is not expected to enter into the thicket of facts. From the own showing of the applicants, the interest of the applicant No. 2 in the Trust is remote. The fact that the applicant is a member of another entity, which had in the past rendered some assistance to the Trust, even if taken at par, would not confer the status of beneficiary on a member of such entity. Likewise, the fact that applicant No.2's children are the past students of the institute run by the Trust is of little assistance in conferring the status of

beneficiary on applicant No. 2. Thus, the learned Joint Charity Commissioner doesn’t seem to have committed any illegality or perversity which warrants interference by this Court in exercise of extraordinary writ jurisdiction.

20. The upshot of the aforesaid consideration is that the petition deserves to be dismissed. Hence, the following order.

ORDER

(i) The petition stands dismissed.

(ii) Rule discharged.

(iii) No costs.

(iv) In view of the disposal of writ petition, Civil Application No. 4372 of 2018 also stands disposed of.

(N.J. JAMADAR, J.)

VD_Dhirde